Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Mobilitie, LLC Petition for Declaratory Ruling, *Promoting Broadband for All Americans by Prohibiting Excessive Charges for Access to Public Rights of Way*.	)	WT Docket No. 16-421

COMMENTS OF

CITYSCAPE CONSULTANTS, INC.

Cityscape Consultants, Inc. ("Cityscape")[1] submits these comments in response to the Petition for Declaratory Ruling ("Petition") filed by Mobilitie, LLC on November 15, 2016 and the Commission's Public Notice ("PN") dated December 22, 2016 seeking comment on the Petition.

Cityscape, on behalf of its municipal clients, has frequently had the opportunity to review and consider applications filed by Mobilitie for wireless infrastructure proposals to be placed in municipal rights-of-way.

I. *How Local Land-Use Regulations or Actions Affect Wireless Infrastructure Deployment*

The PN seeks comments on the impact of local regulation on wireless infrastructure deployment in the aftermath of the Commission's 2009 "shot clock" Declaratory Ruling and the 2014 Infrastructure Order (the "Siting Rules"). In our experience, local governments which engage our services have in each instance adapted

[1] Cityscape is a wireless siting consultant to local government entities throughout the United States. It provides these comments as its own and ***not*** on behalf of its local government clients, but reflective of its experiences with the Petitioner and other like vendors on behalf of communities including but not limited to Coconut Creek, FL, Mishicot, WI, Morrisville, NC, Pooler GA, Savannah, GA and Sedona AZ, each of whom has had direct experience with Mobilitie siting requests in their ROW.

their regulations to comply with not only the Siting Rules but also state legislation prompted by the wireless infrastructure industry which, in many instances, does not match the Siting Rules (see, e.g. North Carolina Statutes §160A-400.51 et seq., which imposes different obligations for processing wireless siting applications on local government than the Siting Rules). Most recently, bills pending in the Florida, Georgia and Arizona legislatures (virtually identical in content and tone) and no doubt other states all seek to further curtail local regulation of infrastructure both within and outside of rights of way for infrastructure.[2] This cacophony of federal and state restrictions on local government requires municipalities to continually revise their regulations to comport with state and federal requirements, while still attempting to exercise their legitimate right to manage the health and safety of their community through zoning laws.

However, it has been our experience that the wireless infrastructure industry has continually misrepresented to local government the effect of the Siting Rules. In numerous instances, a local community has been told that they "must approve, and shall not deny" a facility (sometimes a collocation, sometimes a new facility) because of "federal law". Frequently, applicants who claim "eligible facility" status under the Siting Rules either fail or refuse to provide data to the local government necessary to verify that claim; or, when the information is provided, it is readily apparent that the proposal is not an "eligible facility". Local governments that are playing by the "Siting Rules" are continually challenged by applicants who fail to play by the same rules.

By way of example, the petitioner herein, Mobilitie, recently lost an appeal from an order requiring them to remove an unauthorized tower it constructed in a right of way

[2] See Georgia SB2, Arizona HB 2365 and Florida SB 596/HB687.

in Denison Texas. As more fully detailed in the reporting of the matter[3] by the Denison Herald-Democrat, Mobilitie constructed two towers in public rights of way without obtaining the proper permits from the City and by presenting ***their form*** which had a water department employee signature on it as authorization for construction of the facilities. In addition, their application represented the facility as a "utility pole" when in fact they were wireless communications facilities. The petitioner herein has also sent letters to multiple communities in Connecticut claiming authorization to construct up to 120' foot "utility poles" in those communities right of way and that the local community has no discretion or authority to prevent such installations.[4] Cityscape has directly interacted with the petitioner in Mishicot, Wisconsin, where it claimed it needed to install a 100' "utility pole" at a precise location in a ROW that their representative claimed was dictated by "proprietary software". In fact, that there was an existing 120' monopole tower exactly 35 FEET from the proposed location with collocation availability, which Mobilitie claimed was unsuitable for their purposes, and that it would "absolutely" be allowed under federal law to construct its proposed facility in the ROW.

Mobilitie and other wireless infrastructure companies have also pursued a disingenuous tactic of registering under state public utility commission's regulations as a "provider" of communications services, even though they do not hold any FCC licensed spectrum and do not utilize any unlicensed spectrum to furnish services to a retail customer, and have attempted to use such status to gain access to municipal rights of way. Frequently, this is just a "land grab" by the companies to secure property rights in

[3] http://www.heralddemocrat.com/news/20170223/denison-zba-denies-cell-tower-removal-appeal
[4] http://www.courant.com/community/simsbury/hc-mobilitie-ct-utility-pole-proposals-20160918-story.html

the rights of way prior to having any bona fide wireless provider seeking to actually provide services from such location.

These are just some examples of the actual experiences of local government attempting fulfill its obligations and being met with the above type of tactics by the industry. Even where the infrastructure industry follows the applicable rules, it has been our experience in reviewing applications from the industry for several dozen communities that over 50% of the applications are either incomplete or inaccurate upon initial receipt, or have engineering or structural deficiencies.

II. ***Federal Statutory and Regulatory Framework for Review Timing***

The PN also solicits comments on whether the *2009 Declaratory Ruling* and *2014 Infrastructure Order*'s timelines for local government's review of applications for wireless infrastructure should be revisited in connection with small cell/DAS installations. Cityscape has recommended adoption of those timelines in the communities it represents to match the federal guidelines, even in states which have adopted different timelines.[5] It is our opinion that these timelines should be consistent for all type of infrastructure, both for consistency of determinations by adjudicatory parties and because applications for small cell/DAS installations frequently present the same issues as macro installations, frequently have the same omissions or errors that need to be corrected, and require the same type of analysis and application of local zoning codes as macro installations in order to reach an informed determination. As to "batch" applications, although our experience to date has been a lack of applications of that nature, it would be appropriate to put limits on the total number of installations that could be included in a "batch" filing subject to the timelines because local government's

[5] E.g. Florida (which uses a "business days" measurement) and North Carolina

resources are already severely limited and allowing applicants to flood jurisdictions with applications would overwhelm a community's ability to adequately respond to same.

III. Application Processing Fees and Charges for Use of Rights of Way

It is somewhat disingenuous of Mobilitie to claim it is subject to excessive and unfair fees nationwide for use of rights of way, because our experience with Mobilitie in the various communities nationwide that we provide consultation to has been that Mobilitie has sought designation under applicable state law as a "telecommunications provider" (even though it is not a licensed wireless communications provider) and sought free access to rights of way without ***any*** compensation to local government.[6] Indeed, in the example above, where the Village of Mishicot Wisconsin has available infrastructure for locating the desired equipment, Mobilitie told us and the Village that it MUST go in the ROW just 35 feet from that infrastructure and that no other alternative was suitable, no doubt because if it were located in the ROW, it would have no recurring lease payment obligation under Wisconsin law.

As this infrastructure can be very different from other utilities use of ROW (typically underground conduit and equipment) and can interfere with the customary use of the ROW, such as for sidewalks and pedestrian access, and can present visual impediments to the safe progress of vehicular traffic, it is our opinion that wireless infrastructure within ROW should be required to pay a reasonable fee for use of that ROW, but that such fees should be left to state and local government to determine in accordance with their practices for other utilization of their ROW. So long as the charges

[6] See, e.g., State of Florida Public Service Commission Docket 060626, wherein Mobilitie applied for and received (TA079) certification as an "alternative access vendor", which it has used throughout Florida to seek access to ROW without payment of any compensation to the local government pursuant to applicable Florida statutes (F.S. §337.401)

are consistent with other similar infrastructure utilization of ROW, that determination should not be federally preempted.

Conclusion

For the foregoing reasons, Cityscape would suggest that the Commission take the claims of Mobilitie in its Petition with the proverbial "grain of salt". Both our personal experiences and reporting throughout the country have shown that the Petitioner and its industry counterparts have frequently misrepresented to local government the applicability of federal regulations to their desired infrastructure applications and have attempted numerous ploys to avoid payment of fair compensation for their use of public property. Local governments do not have the resources to counter the lobbying efforts of the infrastructure industry at both a federal and state level to dilute and diminish local regulatory oversight of wireless infrastructure. While local governments uniformly desire such infrastructure to serve their citizens, it must be deployed in a reasonable and regulated manner for consistency of service, safety and aesthetics. We would urge the Commission to deny the Petitioner's request for a Declaratory Ruling but would welcome the Commission's issuance of an NPRM on the issues addressed in the Petition in which both the infrastructure industry, local governments and other stakeholders could all provide input to the Commission and develop solutions to permitting this infrastructure in a reasonable and efficient manner while respecting local government's role in managing its ROW properties.

Respectfully Submitted,

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